

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

Remarks

The Office Action mailed June 09, 2004 has been carefully reviewed and the following remarks are made as a consequence thereof.

Claims 1-22 are now pending in this application. Claims 12-18 are allowed, and Claims 1-11 and 19-22 are rejected.

The rejection of Claims 1-3 under 35 U.S.C. § 102(e) as being anticipated by Santossuosso et al. (U.S. Patent No. 6,325, 523) ("Santossuosso") is respectfully traversed.

Santossuosso describes a display case (10) having doors (12) mounted on a surrounding frame (14), and a plurality of lenses (36) mounted on the frame of the display case near the ends or front end corners of the display shelves (20). The lenses are mounted about the fluorescent tubes (34) and are used to direct light beams (38) toward the shelves in order to provide better lighting or illumination for items (18) located near the front and middle of the shelves.

Claim 1 recites an assembly including "a refrigerator quick chill pan mullion assembly comprising a base comprising a top surface and a bottom surface...a first light element coupled to said base for producing light above said top surface...a second light element coupled to said base for producing light below said bottom surface."

Santossuosso does not describe or suggest an assembly as recited in Claim 1. More specifically, Santossuosso does not describe or suggest a mullion assembly that includes a base having a top surface and a bottom surface, a first light element coupled to said base for producing light above said top surface, and a second light element coupled to said base for producing light below said bottom surface. Rather, in contrast to the present invention, Santossuosso describes a display case having a plurality of lenses mounted about fluorescent tubes used to direct light beams toward the shelves in the display case, and does not describe that

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

the lights are mounted above and below a mullion assembly base for producing light above and below the base, respectively. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Santossuosso.

Claims 2-3 depend from independent Claim 1. When the recitations of Claims 2-3 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-3 are likewise patentable over Santossuosso.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. § 102(e) rejection of Claims 1-3 be withdrawn.

The rejection of Claim 22 under 35 U.S.C. § 102(b) as being anticipated by Wilson (U.S. Patent No. 4,627,246) is respectfully traversed.

Wilson describes a refrigerator (10) including an upper freezing compartment (12), and a lower fresh food compartment (13) separated by a compartment partition assembly (15). The compartment partition assembly includes an insulating member (50) forming a thermal compartment divider, and a drain opening (66) defined in the insulating member. Notably, Wilson does not describe or suggest the partition assembly overlying a pan within the lower fresh food compartment.

Claim 22 recites a refrigerator "comprising a fresh food compartment...a pan located within said fresh food compartment and operable in a plurality of modes thermally independent of said fresh food compartment...an insulated mullion assembly overlying said pan and thermally isolating said pan from said fresh food compartment".

Wilson does not describe nor suggest a refrigerator as recited in Claim 22. More specifically, Wilson does not describe or suggest a refrigerator including a pan located within a fresh food compartment...and an insulated mullion assembly overlying the pan and thermally isolating the pan from the fresh food compartment. Rather, in contrast to the present invention,

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

Wilson describes a compartment partition assembly thermally isolating the fresh food compartment from the freezing compartment, and does not describe a partition assembly overlying a pan within the fresh food compartment. Accordingly, for at least the reasons set forth above, Claim 22 is submitted to be patentable over Wilson.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. § 102(b) rejection of Claim 22 be withdrawn.

The rejection of Claims 4-5 under 35 U.S.C. § 103(a) as being unpatentable over Lange et al. (U.S. Patent No. 6,478,445) ("Lange") in view of Santossuosso and further in view of Fletcher (U.S. Patent No. 4,916,921) is respectfully traversed.

Santossuosso is described above. Lange describes a light column assembly (10) including a hollow tube (12), a first endcap (14), a first optical lighting film (16), a second optical lighting film (18), and a light source (20). The tube includes a rear wall (22) with an inner surface (24), and a front wall (26) that extends opposite the rear wall. The tube front wall has an inner surface (27). The tube also includes a first end (28), and a second end (30). The first endcap is coupled to the tube first end and has a reflective inner surface (32). The light source is coupled to the tube second end and is positioned to direct a light beam (34) having a predetermined beam spread angle (36) towards the first endcap such that the light source is substantially evenly emitted from the tube through the tube front wall.

Fletcher describes an ice maker including a removable tray (70) that is partially moveable when a housing door (82) is opened. Specifically, a biasing means (84) is coupled to the tray and biases the tray up a slope of a slanted supporting surface so that a gripping ledge or lip (86) of the tray projects out of a chamber opening (85) when the housing door is opened. Fletcher also describes an electrical switch (94) having a spring loaded contact (96) mounted on an inner side of a rear wall (59). The contact is engaged by the ledge (86) opposite from the gripping ledge.

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

Claim 1 recites an assembly including "a refrigerator quick chill pan mullion assembly comprising a base comprising a top surface and a bottom surface...a first light element coupled to said base for producing light above said top surface...a second light element coupled to said base for producing light below said bottom surface."

None of Lange, Santossuosso, or Fletcher, considered alone or in combination, describe or suggest an assembly as recited in Claim 1. More specifically, none of Lange, Santossuosso, or Fletcher, considered alone or in combination, describe or suggest a mullion assembly including a first light element coupled to a base for producing light above a top surface of the base, and a second light element coupled to the base for producing light below a bottom surface of the base. Rather, in contrast to the present invention, Lange describes a refrigerator including a vertically extending mullion assembly positioned between a fresh food compartment and a freezer storage compartment, and a light column assembly positioned away from each of the pan and the mullion, Santossuosso describes a display case having a plurality of lenses mounted about fluorescent tubes used to direct light beams toward the shelves in the display case, and Fletcher describes an ice maker. As such, none of the cited art describes lights mounted above and below a mullion assembly base for producing light above and below the base, respectively. Accordingly, for at least the reasons set forth above, Claim 1 is patentable over the Lange in view of Santossuosso and further in view of Fletcher.

Claims 4-5 depend from independent Claim 1. When the recitations of Claims 4-5 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 4-5 are likewise patentable over Lange in view of Santossuosso and further in view of Fletcher.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. § 103 rejection of Claims 4-5 be withdrawn.

Via Facsimile (703) 872-9306

**9D-HR-19939
PATENT**

The rejection of Claims 6-11 under 35 U.S.C. § 103(a) as being unpatentable over Lange in view of Fletcher is respectfully traversed.

Lange and Fletcher are each described above.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Lange nor Fletcher, considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Lange with Fletcher, because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. Rather, only the conclusory statement that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the lighting assembly for a refrigeration appliance of Lange ('445) with the control panel and the switch disclosed by Fletcher ('921), since the device of Fletcher ('921) would provide a [and]switching device connecting an electrical line to a pair of lights and the control panel to control the lighting system in order to indicate the presence and/or the absence of a foodstuff relative to its corresponding chamber" suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levensgood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaack, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection be withdrawn.

Further, and to the extent understood, neither Lange nor Fletcher, considered alone or in combination, describe or suggest the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claims 7-11 depend from Claim 6 which recites a refrigerator pan assembly "comprising a pan having a top...an insulated mullion assembly extending generally over the top of said pan, said mullion assembly comprising a top surface, at least one light source extending through said top surface for illuminating said pan from above, and a switch assembly mounted to said top surface for user selection of a pan condition".

Neither Lange nor Fletcher, considered alone or in combination, describe or suggest a refrigerator pan assembly as recited in Claim 6. More specifically, neither Lange nor Fletcher, considered alone or in combination, describe or suggest a refrigerator pan assembly including an

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

insulated mullion assembly extending generally over the top of a pan, and at least one light source extending through a top surface of the mullion assembly for illuminating the pan from above. Rather, in contrast to the present invention, Lange describes a refrigerator including a vertically extending mullion assembly positioned between a fresh food compartment and a freezer storage compartment, and a light column assembly positioned away from each of the pan and the mullion, and Fletcher describes an ice maker. Accordingly, for at least the reasons set forth above, Claim 6 is submitted to be patentable over Lange in view of Fletcher.

Claims 7-11 depend from independent Claim 6. When the recitations of Claims 7-11 are considered in combination with the recitations of Claim 6, Applicants submit that dependent Claims 7-11 are likewise patentable over Lange in view of Fletcher.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. § 103 rejection of Claims 6-11 be withdrawn.

The rejection of Claims 19-21 under 35 U.S.C. § 103(a) as being unpatentable over Hamada et al. (U.S. Patent No. 6,619,814) ("Hamada") in view of Hagemeyer Cook et al. (U.S. Patent No. 5,701,235) ("Cook") is respectfully traversed.

Hamada et al. describe a showcase (1) including a heat insulating wall (2) having a substantially U-shaped cross section and side plates (3) disposed to both sides of the heat insulating wall. A partition plate (4) is provided inside the insulating wall such that a gap extends therebetween to serve as a duct (7). A florescent lamp (35) is coupled to a mounting plate (34) on the front edge of a ceiling wall, such that, the lamp illuminates the frontage of the showcase.

Cook describes a control panel (15) having several controls with which a user can adjust refrigerator and freezer temperatures, etc. A freezer control indicator (16) is located within a freezer temperature control slot (17) and a refrigerator control indicator (18) is located within a refrigerator temperature control slot (19). The control indicators utilize slide bar thermostats.

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

The control indicators provide the user with a useful indication of the temperature setting by the indicators' position relative to the index of temperature values provided on the control panel.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Hamada nor Cook, considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Hamada with Cook, because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. Rather, only the conclusory statement that "[i]t would have been obvious to one of ordinary skill in the art at the time the of the invention to provide the showcase of Hamada ('814) with the control panel taught by Hagemeyer Cook ('235), since the device of Hagemeyer Cook ('235) would provide a control panel commonly having several controls with which the user can adjust the refrigerator and freezer temperatures" suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. *In re Vaack*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection be withdrawn.

Further, and to the extent understood, neither Hamada nor Cook, considered alone or in combination, describe or suggest the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 19 recites a refrigerator quick chill and thaw system for a refrigerator including a fresh food compartment, wherein the refrigerator quick chill and thaw system comprising "a pan having a top...a mullion for separating said pan from the fresh food compartment...said mullion situated substantially horizontally above the top of said pan...a light coupled to said mullion for illuminating said pan...a control panel coupled to said mullion for user selection of a pan condition...and a control board coupled to said mullion and operatively coupled to said control panel".

Neither Hamada nor Cook, considered alone or in combination, describe or suggest a refrigerator quick chill and thaw system as recited in Claim 19. More specifically, neither Hamada nor Cook, considered alone or in combination, describe or suggest a system including a mullion for separating a pan from a fresh food compartment, the mullion situated substantially horizontally above the pan, and a light coupled to the mullion for illuminating the pan. Rather, in contrast to the present invention, Hamada describes a showcase including a flat fluorescent

Via Facsimile (703) 872-9306

9D-HR-19939
PATENT

lamp attached to a concave portion, and the concaved portion is defined in the front surface of an upper portion of the insulating wall, such that, the lamp illuminates the frontage of the showcase instead of the pan, and Cook describes a control panel for a refrigerator. According, for at least the reasons set forth above, Claim 19 is submitted to be patentable over Hamada in view of Cook.

Claim 20 depends from independent Claim 19. When the recitations of Claims 20 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 is likewise patentable over Hamada in view of Cook.

Claim 21 recites a quick chill and thaw system for a refrigerator including at least a compartment, a quick chill and thaw fan, an air supply in communication with the fan, and a heater element in communication with the fan, wherein the system comprising "a pan in fluid communication with the fan, the air supply, and the heater element...a mullion base for thermally isolating said pan from said compartment, said mullion base situated substantially horizontally above said pan...a light coupled to said base for illuminating said pan...a control panel coupled to said base for user selection of a pan condition...a control board coupled to said base and operatively coupled to said control panel, said control board regulating the fan, air supply, and heater element in accordance with a selected one of a plurality of modes of operation, said plurality of modes comprising at least a quick chill mode and a thaw mode".

Neither Hamada nor Cook, considered alone or in combination, describe or suggest a quick chill and thaw system as recited in Claim 21. More specifically, neither Hamada nor Cook, considered alone or in combination, describe or suggest a system including a mullion base for thermally isolating a pan from a compartment, a light coupled to the base for illuminating the pan, and a control panel coupled to the base for user selection of a pan condition. Rather, in contrast to the present invention, Hamada describes a flat fluorescent lamp attached to a concave portion, and the concaved portion is defined in the front surface of an upper portion of the insulating wall, such that, the lamp illuminates the frontage of the showcase, and Cook describes

Via Facsimile (703) 872-9306

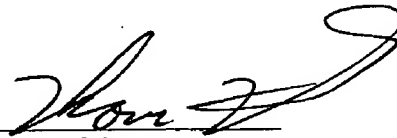
9D-HR-19939
PATENT

a control panel for a refrigerator. Accordingly, for at least the reasons set forth above, Claim 21 is submitted to be patentable over Hamada in view of Cook.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claims 19-21 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Thomas M. Fisher
Registration No. 47,564
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070